

REMARKS

In the Office Action, claims 42, 44-49 and 51-72 were rejected on various grounds and claims 43 and 50 were withdrawn from further consideration as being drawn to a non-elected species. In response, claims 57 and 66 are amended to correct grammatical errors, and claims 43, 44, 49, 50 and 51 are amended to sharpen their already-existing distinctions over the prior art. Replacement Figure 7, submitted herewith, corrects a typographical error. Support for the replacement sheet is found in paragraph [0035] of the specification. No new matter is introduced with these amendments, and no new issues of patentability are raised by any of the instant amendments.

Applicants respectfully request reconsideration of the instant claims in view of the following remarks. Applicants urge that the instant claims are in condition for allowance. Favorable consideration is respectfully requested.

Response to Withdrawal of Claims 43 and 50 from Consideration Under 37 CFR 1.142(b)

The Examiner has withdrawn claims 43 and 50 from further consideration under 37 CFR 1.142(b) contending that they are drawn to a non-elected species. To confirm that they do relate to the elected species, claims 43 and 50 have been amended to read on figures 7 and 8; *i.e.*, the elected Species 3. Therefore, these claims are properly the subject matter of the instant application. Claims 44 and 51 have been amended to distinguish from claims 43 and 50 respectively, yet read on the elected species. In particular, the flexible connectors shown in figure 8, *i.e.*, the elected Species 3, are staggered between neighboring adjacent serpentine sections along the longitudinal length of the stent after the stent is expanded. In contrast, the flexible connectors in figure 7, *i.e.*, the elected Species 3, are horizontally aligned between

neighboring adjacent serpentine sections along the longitudinal length of the slant before expansion. Therefore, both claims read on the elected species. Applicants respectfully request reconsideration and withdrawal of Examiner's objection.

Response to Rejections Under 35 U.S.C. § 112, Second Paragraph

Claims 49, 51-56 and 66-72 were rejected under 35 U.S.C § 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicants regard as their invention. Applicants respectfully disagree with both asserted grounds for the § 112 rejections.

Claim 49 (and 51) was rejected on the basis that it related to the background environment of the invention rather than claimed elements. Claim 49 has been rewritten to recite "... a flexible connector connecting loops of adjacent vertical meander patterns" Thus, the flexible connector has structural connection to the adjacent vertical meander patterns. In addition, the flexible connector has structural recitations including an elongatable member. Applicants respectfully request reconsideration and withdrawal of this rejection.

Claims 52 and 66 (as well as 53-56 and 67-72) were rejected for using the terms "odd" and "even" in a manner said to be inconsistent with the claims. The Examiner substantiated this rejection by stating his understanding of "odd" and "even" as describing the ordinary arithmetic meaning of these terms – *i.e.*, whether or not divisible by 2. However, such an understanding is inappropriate for the subject matter of the pending claims in light of the written description. The claim terms "odd" and "even" are well defined in the specification in paragraph [0035], which describes, with reference to figures 1, 2, 4, 6 and 7, "two types of vertical meander patterns 11e and 11o which are 180° out of phase with each other." The reference characters, "e" and "o," are

shorthand designations for “even” and “odd,” as defined in paragraph [0022] of the instant specification. These are not arithmetic notions.

The meanings of these terms, as explained in the specification, are therefore consistent with the claims. As Examiner well knows, the inventor may be his own lexicographer and “may define his own terms, regardless of common or technical meaning.” *Rohm and Haas Co. v. Dawson Chemical Co., Inc.*, 557 F. Supp 739 (S.D. Tex. 1983), rev’d on other grounds, 722 F.2d 1556 (Fed. Cir. 1983). Indeed, the terms “odd” and “even” have been allowed in claims 35 and 36 of the parent of this application (US Patent No. 6,635,084), which has an identical specification. Accordingly, applicants respectfully request withdrawal of this rejection.

Applicants have responded in detail to the Examiner’s rejections as they relate to specific claims identified in the pending Office Action. Applicants therefore respectfully request that the Examiner withdraws the indefinite rejection for all pending claims. Reconsideration and withdrawal of this § 112 rejection is respectfully requested.

Response to Rejections Under 35 U.S.C. §§102(e) and/or 103(a)

Claims 42, 44-49, 51, 57-60, 63-69 and 72 were rejected under 35 U.S.C. §102(e) as anticipated by or in the alternative under 35 U.S.C. §103(a) as obvious over Pinchasik et al (US Patent No. 5,449,373). In addition, claims 52-56, 61, 62, 70 and 71 were rejected under 35 U.S.C § 103(a) as being unpatentable over Pinchasik et al. Applicants respectfully disagree with all of the foregoing rejections.

The Examiner takes the position that Pinchasik describes a plurality of continuous serpentine sections and a plurality of flexible connectors forming a generally uniformly-sized cell structure. Applicants respectfully disagree.

Pinchasik does not teach or suggest the single continuous serpentine sections, as defined by the instant claims. Similarly, Pinchasik does not teach or suggest first meander patterns having loops, which are longitudinally spaced from each other, as claimed. Rather, Pinchasik describes a tubular member having a series of rigid sections (102 of figure 3A) consisting of rectangular-shaped slots that deform into diamond-shaped openings upon expansion. These rigid sections are connected by a series of connectors (124 of figure 3C) which allow for articulation.

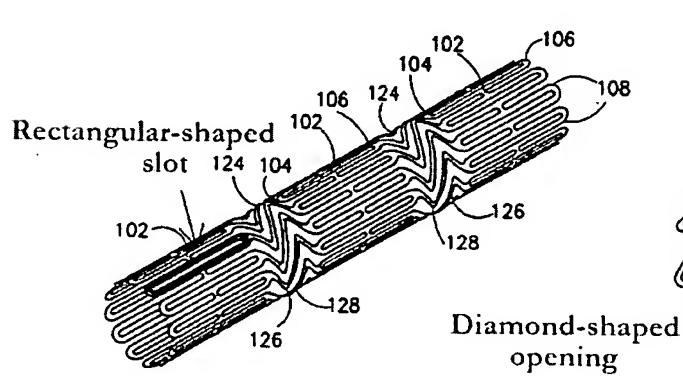


FIG.3A

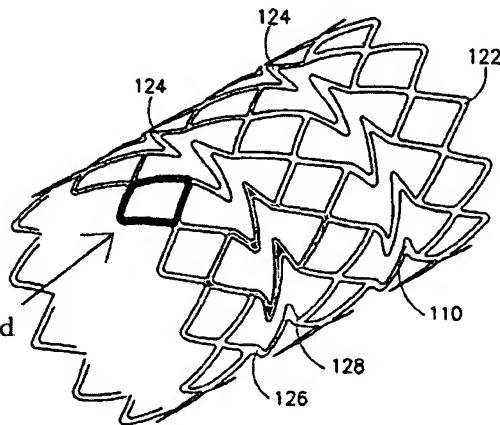


FIG.3C

If viewed as having cells, as the Examiner does, Pinchasik describes two types of cells, which have different shapes and different sizes. Compare red and green cells above. Therefore, Pinchasik does not teach or suggest a stent having cells that are uniformly sized, as recited in the instant claims. Therefore, Pinchasik does not teach or suggest the subject matter of these claims as a whole.

To the extent the Examiner maintains that Pinchasik teaches or suggests any of the claimed elements, applicants have properly claimed priority to the '373 Patent application under 35 U.S.C. §120. (See Official Filing Receipt dated Dec. 10, 2003, and paragraph [0001] of the instant specification.) Under this claim to priority, applicants are entitled to the benefit of the 08/213,272 application (issued as USP 5,449,373) for the subject matter disclosed therin. As such, the Pinchasik reference cannot be used against the subject matter of the instant claims. To conclude otherwise would deny the applicants the benefit of their claim to priority.

In detailing his rejections under 35 U.S.C § 103, the Examiner contends that Pinchasik renders the instant claims obvious, even though the Examiner concedes the Pinchasik reference fails to teach or suggest flexible connectors having a smaller width than the rigid sections or a stent which is coated with medicine. However, the Examiner suggests that these two features are "old and well-known" in this art. The Examiner went so far as to comment that applicants admitted this "well-known-in-the-art" statement to be prior art by failing to traverse the Examiner's assertions regarding these facts. Applicants respectfully disagree with these positions in all aspects.

Taking applicants' alleged admission first, the premise for the Examiner's contention is in error; applicants did in fact traverse the Examiner's previous rejections under 35 U.S.C. §103(a), fully and completely. (See Response filed June 25, 2007, pp. 13 and 15, stating "Applicants respectfully traverse this rejection.") Therefore, there is no basis to contend that applicants made any admission.

In addition, the Examiner's bald assertions that strut width and medicinal stent coatings are "old and well-known" do not qualify for official notice under MPEP §2144.03 as the Examiner appears to contend.

As the MPEP makes clear,

Official notice unsupported by documentary evidence should only be taken by the examiner *where the facts asserted to be well-known, or to be common knowledge in the art are capable of instant and unquestionable demonstration as being well-known.*

(MPEP §2144.03, at 2100-134, emphasis added.)

In the present situation, whether drug coatings for stents were known at the time of applicants' filing in 1994 is not capable of instant and unquestionable demonstration. Indeed, in 1994, few stent designs were known at all and even less was known about drug coatings for such stents. Similarly, the extent to which strut width in stents would or could affect the performance and/or durability of a stent was not capable of instant and unquestionable demonstration. In 1994, it was not common knowledge that a smaller width strut would provide a more flexible connection without also detrimentally affecting the overall performance of a stent – *i.e.*, radial support, vessel coverage, etc. For these reasons, neither of these features recited in the instant claims can be established by Official Notice as the Examiner attempts to do.

For these reasons, applicants respectfully request reconsideration and withdrawal of the instant §102(e) and 103(a) rejections.

CONCLUSION

Based on the foregoing amendments and remarks, applicants respectfully request reconsideration and withdrawal of the rejections of the pending claims and allowance of this application. Favorable action by the Examiner is earnestly solicited.

AUTHORIZATION

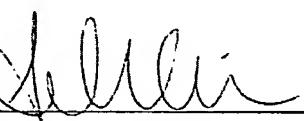
The Commissioner is hereby authorized to charge any additional fees which may be required for consideration of this Amendment to Deposit Account No. 50-4387, Order Number 92077.022US10.

In the event that an extension of time is required, or which may be required in addition to that requested in a petition for an extension of time, the Commissioner is requested to grant a petition for that extension of time which is required to make this response timely and is hereby authorized to charge any fee for such an extension of time or credit any overpayment for an extension of time to Deposit Account No. 50-4387, Order No. 92077.022US10.

Respectfully Submitted,
CADWALADER, WICKERSHAM & TAFT L.L.P.

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